



May 12, 2000

Mr. James R. Hines  
Assistant General Counsel  
Office of the Governor  
P. O. Box 12428  
Austin, Texas 78711

OR2000-1873

Dear Mr. Hines:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136289.

The Office of the Governor (the "office") received a request for documents and information relating to the requestor's application for the position of Adjutant General, including state policies relative to the qualifications for this position. The requestor also asked for copies of the qualifications and resumes of all candidates for the position of Adjutant General. You claim that portions of the candidates' applications are excepted from disclosure under section 552.130 of the Government Code. Because you have only asked for a decision regarding the applications, we assume that you have released the remaining responsive information. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The office received the request on March 31, 2000 and, therefore, had until April 21, 2000 to submit a copy of the requested information. Because the requested information was hand delivered on April 24, you failed to request a decision within the fifteen business day period mandated by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested

information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that portions of the submitted information are excepted under section 552.130 of the Government Code. Section 552.130 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the highlighted driver's license numbers under section 552.130(a) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

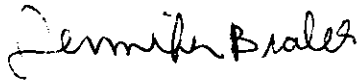
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Bialek".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/pr

Ref: ID# 136289

Encl. Submitted documents

cc: Maurice H. Udell  
403 Tanglewood  
Friendswood, Texas 77546  
(w/o enclosures)